

## **ADDENDUM A – JOINT APPENDIX OF DEFENDANT-SPECIFIC FACTS**

### **I. Tyson Defendants<sup>1</sup>**

#### **A. Land Application of Poultry Litter by Poultry Growers Under Contract With Tyson Defendants Has Not Impacted Any Waters of the State of Oklahoma.**

1. Plaintiffs have not identified any specific land application of poultry litter by a grower under contract with Tyson Defendants that has caused contamination of the waters or groundwater in the IRW. *See* Thompson Dep. at 16:14-22:25, 31:7-31:23, 42:13-43:7 (Ex. 60); Strong Dep. at 171:21-173:17 (Ex. 61); Fisher I Dep. at 146:22-149:1 (Ex. 62); Fisher II Dep. at 473:15-23 (Ex. 1); Tolbert Dep. at 160:4-164:17 (Ex. 63); P.I.T. at 2005:7-16, 2006:12-15 (Ex. 31); Exs. 64-66 at Nos. 5-8.
2. Plaintiffs have not identified any specific land application of poultry litter by a grower under contract with Tyson Defendants that has resulted in the runoff or discharge of poultry litter to waters in the IRW. *See* Thompson Dep. at 16:14-22:25, 31:7-31:23, 42:13-43:7 (Ex. 60); Strong Dep. at 171:21-173:17 (Ex. 61); Fisher I Dep. at 146:22-149:1 (Ex. 62); Fisher II Dep. at 473:15-23 (Ex. 1); Tolbert Dep. at 160:4-164:17 (Ex. 63); P.I.T. at 2005:7-16, 2006:12-15 (Ex. 31); Exs. 64-66 at Nos. 5-8.

#### **B. Poultry Growers Under Contract With Tyson Defendants Have Not Violated Oklahoma or Arkansas Law.**

1. Plaintiffs have not identified any evidence that a poultry grower under contract with Tyson Defendants has violated any applicable poultry litter laws or regulations in Oklahoma and Arkansas. *See* Peach Dep. at 37:15-39:4, 75:2-76:10, 90:3-12, 92:25-93:6, 95:20-96:11, 114:14-117:7 (Ex. 32); Thompson Dep. at 16:14-22:25, 31:7-31:23, 42:13-43:7 (Ex. 60); Strong Dep. at 176:12-24 (Ex. 61); Fisher I Dep. at 146:22-149:1 (Ex. 62); Fisher II Dep. at 473:15-23 (Ex. 1); Tolbert Dep. at 160:4-164:17 (Ex. 63); P.I.T. at 1301:6-1303:8, 2002:6-2003:5 (Ex. 31); Littlefield Dep. at 23:19-21, 43:3-15 (Ex. 37); Phillips I Dep. at 63:18-23 (Ex. 67); Exs. 64-66 at Nos. 5-8.
2. Plaintiffs have not identified any evidence that a poultry grower under contract with Tyson Defendants has violated any provision of their state-approved Nutrient Management Plans or Animal Waste Management Plans. *See* Peach Dep. at 37:15-39:4, 75:2-76:10, 90:3-12, 92:25-93:6, 95:20-96:11, 114:14-117:7 (Ex. 32); Thompson Dep. at 16:14-22:25, 31:7-31:23, 42:13-43:7 (Ex. 60); Strong Dep. at 176:12-24 (Ex. 61); Fisher I Dep. at 146:22-149:1 (Ex. 62); Fisher II Dep. at 473:15-23 (Ex. 1); Tolbert Dep. at 160:4-164:17 (Ex. 63); P.I.T. at 1301:6-1303:8, 2002:6-

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<sup>1</sup> The statements of fact set forth herein apply separately to Defendants Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc., each of which is a separate corporate entity named as a separate defendant in this case. *See* Undisputed Facts ¶¶1-2.

2003:5 (Ex. 31); Littlefield Dep. at 23:19-21, 43:3-15 (Ex. 37); Phillips I Dep. at 63:18-23 (Ex. 67).; Exs. 64-66 at Nos. 5-8; *see, e.g.*, Exs. 17-18.

**C. Tyson Defendants Do Not Maintain Any Relationship With Non-Party Farmers And Ranchers Who Purchase Or Obtain Poultry Litter From Growers Or Other Sources.**

1. There is no evidence that any Tyson Defendant maintains a contractual or other relationship with the non-party farmers and ranchers who purchase or obtain poultry litter from Growers or other sources (not Defendants).

**D. Poultry Farms Owned or Operated by Tyson Defendants Have Not Impacted Any Waters of the State of Oklahoma or Violated Oklahoma or Arkansas Law.**

1. To the extent that any Tyson Defendant owns or operates a poultry farm in the IRW, Plaintiffs have not identified any specific land application of poultry litter by Tyson Defendants that has caused contamination of the waters or groundwater in the IRW. *See* Thompson Dep. at 16:14-22:25, 31:7-31:23, 42:13-43:7 (Ex. 60); Strong Dep. at 171:21-173:17 (Ex. 61); Fisher I Dep. at 146:22-149:1 (Ex. 62); Fisher II Dep. at 473:15-23 (Ex. 1); Tolbert Dep. at 160:4-164:17 (Ex. 63); P.I.T. at 2005:7-16, 2006:12-15 (Ex. 31); Exs. 64-66 at Nos. 5-8.
2. To the extent that any Tyson Defendant owns or operates a poultry farm in the IRW, Plaintiffs have not identified any specific land application of poultry litter by Tyson Defendants that has resulted in the runoff or discharge of poultry litter to waters in the IRW. *See* Thompson Dep. at 16:14-22:25, 31:7-31:23, 42:13-43:7 (Ex. 60); Strong Dep. at 171:21-173:17 (Ex. 61); Fisher I Dep. at 146:22-149:1 (Ex. 62); Fisher II Dep. at 473:15-23 (Ex. 1); Tolbert Dep. at 160:4-164:17 (Ex. 63); P.I.T. at 2005:7-16, 2006:12-15 (Ex. 31); Exs. 64-66 at Nos. 5-8.
3. To the extent that any Tyson Defendant owns or operates a poultry farm in the IRW, Plaintiffs have not identified any evidence that any Tyson Defendant has violated any applicable poultry litter laws or regulations in Oklahoma and Arkansas. *See* Peach Dep. at 37:15-39:4, 75:2-76:10, 90:3-12, 92:25-93:6, 95:20-96:11, 114:14-117:7 (Ex. 32); Thompson Dep. at 16:14-22:25, 31:7-31:23, 42:13-43:7 (Ex. 60); Strong Dep. at 176:12-24 (Ex. 61); Fisher I Dep. at 146:22-149:1 (Ex. 62); Fisher II Dep. at 473:15-23 (Ex. 1); Tolbert Dep. at 160:4-164:17 (Ex. 63); P.I.T. at 1301:6-1303:8, 2002:6-2003:5 (Ex. 31); Littlefield Dep. at 23:19-21, 43:3-15 (Ex. 37); Phillips I Dep. at 63:18-23 (Ex. 67); Exs. 64-66 at Nos. 5-8.
4. To the extent that any Tyson Defendant owns or operates a poultry farm in the IRW, Plaintiffs have not identified any evidence that any Tyson Defendant has violated any provision of their applicable Nutrient Management Plans or Animal Waste Management Plans issued and/or approved by Oklahoma and Arkansas. *See* Peach Dep. at 37:15-39:4, 75:2-76:10, 90:3-12, 92:25-93:6, 95:20-96:11, 114:14-117:7 (Ex. 32); Thompson Dep. at 16:14-22:25, 31:7-31:23, 42:13-43:7 (Ex. 60); Strong Dep. at 176:12-24 (Ex. 61); Fisher I Dep. at 146:22-149:1 (Ex. 62); Fisher II Dep. at 473:15-

23 (Ex. 1); Tolbert Dep. at 160:4-164:17 (Ex. 63); P.I.T. at 1301:6-1303:8, 2002:6-2003:5 (Ex. 31); Littlefield Dep. at 23:19-21, 43:3-15 (Ex. 37); Phillips I Dep. at 63:18-23 (Ex. 67).; Exs. 64-66 at Nos. 5-8; *see, e.g.*, Exs. 17-18.

## **II. Cal-Maine Defendants<sup>2</sup>**

### **A. Cal-Maine Farms, Inc. has never had any operation within the Illinois River Watershed.**

1. For a limited period of time, Cal-Maine Foods, Inc. had production in the Illinois River Watershed. Cal-Maine Farms, Inc., however, has never had any operation or production of any nature within the Illinois River Watershed. It has never had any production of any nature in the Illinois River Watershed, nor has it ever contracted with any independent contract grower in the Illinois River Watershed to produce any poultry product. *See* Ex. 68 at No. 1. Accordingly, Cal-Maine Farms, Inc. has never done anything that has had, or could have had, any impact at all on any part of the environment of the Illinois River Watershed.

## **III. George's Defendants<sup>3</sup>**

### **A. The Waters of the State of Oklahoma Have Not Been Impacted by Land Application of Poultry Litter by George's Defendants or by Poultry Growers Under Contract With George's.**

1. Plaintiffs do not have evidence of a quantity of phosphorous entering the Illinois River Watershed ("IRW") that is attributable to either George's or poultry growers operating under contract with George's. *See* Engle Dep. at 457 (Ex. 25); Olsen I Dep. at 333-34 (Ex. 58); Fisher II Dep. at 265-66, 560 (Ex. 1).
2. Plaintiffs do not have evidence that any specific constituent or molecule of litter from either George's or poultry growers operating under contract with George's is or has been present in the waters of the IRW. *See* Engle Dep. at 457 (Ex. 25); Olsen I Dep. at 333-34 (Ex. 58); Fisher II Dep. at 265-66, 560 (Ex. 1).
3. Plaintiffs do not have evidence of any alleged contamination or pollution of groundwater, streams, or rivers attributable to either George's or poultry growers

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<sup>2</sup> The statements of fact set forth herein apply separately to Defendants Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc., each of which is a separate corporate entity named as a separate defendant in this case. *See* Undisputed Facts ¶¶1, 5.

<sup>3</sup> The statements of fact set forth herein apply separately to Defendants George's, Inc. and George's Farms, Inc., each of which is a separate corporate entity named as a separate defendant in this case. *See* Undisputed Facts ¶¶1, 4.

operating under contract with George's. *See* Engle Dep. at 457 (Ex. 25); Olsen I Dep. at 333-34 (Ex. 58); Fisher II Dep. at 265-66, 511-12, 560 (Ex. 1); Olsen II Dep. at 46-47 (Ex. 4); Parrish Dep. at 197-98 (Ex. 34); Thompson Dep. at 21-22, 29-32, 42-44 (Ex. 60); Littlefield Dep. at 175-77 (Ex. 37); Tolbert Dep. at 160-64 (Ex. 63); Craig Dep. at 92 (Ex. 69); Peach Dep. at 75-80 (Ex. 32).

4. Plaintiffs have not identified any specific land application of poultry litter by George's or any poultry grower operating under contract with George's that is known to have resulted in the runoff or discharge of poultry litter to any waters in the IRW. *See* Olsen II Dep. at 46-47 (Ex. 4); Fisher II Dep. at 265-66, 560 (Ex. 1); Thompson Dep. at 21-22 (Ex. 60); Littlefield Dep. at 175-77 (Ex. 37); Tolbert Dep. at 160-64 (Ex. 63); Craig Dep. at 92 (Ex. 69).
5. Plaintiffs do not have evidence of any injury caused by phosphorous or bacteria entering the IRW that is attributable to either George's or poultry growers operating under contract with George's. *See* Peach Dep. at 90-96 (Ex. 32); Olsen II Dep. at 517-18 (Ex. 4); Phillips II Dep. at 8 (Ex. 70); Teaf Dep. at 94-95 (Ex. 71); Fisher II Dep. at 265-66, 511-12, 560 (Ex. 1).
6. Plaintiffs do not have evidence of any alleged costs incurred from damages attributable to either George's or poultry growers operating under contract with George's. *See* Phillips II Dep. at 8 (Ex. 70); Smithee Dep. at 6-7 (Ex. 72).

#### **IV. Defendant Peterson Farms, Inc.**

##### **A. Peterson Farms, Inc. Has Not Land Applied or Stored Poultry Litter in the IRW.**

1. Plaintiffs admit that Peterson Farms has not operated or owned a poultry farm in the IRW. *See* Fisher II Dep. at 475:15-18 (Ex. 1).
2. Plaintiffs admit that Peterson Farms has not land applied or stored any poultry litter in the IRW. *See* Fisher II Dep. at 191:3-10, 475:1-476:11 (Ex. 1).

##### **B. Land Application of Poultry Litter by Poultry Growers Under Contract With Peterson Farms Has Not Impacted Any Waters of the State of Oklahoma.**

1. Plaintiffs investigated only one land application of poultry litter by a grower under contract with Peterson Farms, but they did not connect such application to any contamination of waters in the IRW. *See* Fisher II Dep. at 477:19-478:10, 560:5-21 (Ex. 1); Fisher I Dep. at 262:2-264:10, 265:22-266:9, 268:2-6 (Ex. 62).
2. Plaintiffs admit they do not have any evidence that land applications of poultry litter by any poultry grower under contract with Peterson Farms caused any groundwater contamination. *See* Fisher II Dep. at 511:5-17, 512:8-18 (Ex. 1); Fisher I Dep. at 237:13-238:10, 239:12-18, 240:9-17, 241:12-23 (Ex. 62); Parrish Dep. at 197:6-198:15 (Ex. 34).

3. Plaintiffs admit that they do not have any evidence that contract poultry growers for Peterson Farms caused runoff or discharge to, or contamination of the waters of the State. *See* Littlefield Dep. at 50:7-10, 139:1-142:5 (Ex. 37); Thompson Dep. at 21:22-22:25 (Ex. 60); Peach Dep. at 55:23-56:21 (Ex. 32); Berry Dep. at 217:11-16 (Ex. 73).

**C. Poultry Growers Under Contract With Peterson Farms Have Not Violated Their Nutrient Management Plans or Animal Waste Management Plans.**

1. Plaintiffs admit that they do not have any evidence that contract poultry growers for Peterson Farms violated their applicable Nutrient Management Plans or Animal Waste Management Plans. *See* Fisher II Dep. at 473:8-23 (Ex. 1); Parrish Dep. at 259:19-25 (Ex. 34).

**V. Defendant Simmons Foods, Inc.**

**A. Simmons Foods, Inc. has not applied or stored any poultry litter in the IRW.**

1. Simmons Foods, Inc. does not own any poultry farms in the IRW and has not land applied any poultry litter in the IRW. *See* Murphy Affidavit at ¶3 (Ex. 74).

**B. Simmons Foods, Inc. has not violated any laws.**

1. Plaintiff admits it has no evidence that Simmons Foods, Inc. has violated any laws. *See* Thralls Dep. at 96:24-97: 17 (Ex. 75); Peach Dep. at 75:17-76:10, 95:20-96:11, 114:14-117:7 (Ex. 32); Fisher II Dep. at 473:15-23 (Ex. 1).

**C. Poultry Growers Under Contract with Simmons Foods, Inc. have not violated any laws.**

1. Plaintiff admits it has no evidence that any poultry farmer under contract with Simmons Foods, Inc. has violated any laws. *See* Peach Dep. at 75:17-76:10 (Ex. 32); Fisher II Dep. at 473:15-23 (Ex. 1).
2. Plaintiff admits it has no evidence that any poultry farmer under contract with Simmons Foods, Inc. has violated or failed to follow their Nutrient Management Plans or Animal Waste Management Plans. *See* Peach Dep. at 75:17-76:10 (Ex. 32); Fisher II Dep. at 473:15-23 (Ex. 1).

**D. Land Application of Poultry Litter by Poultry Growers Under Contract with Simmons Foods, Inc. has not impacted any waters of the state of Oklahoma.**

1. Plaintiff admits it has no evidence that the land application of poultry litter by a poultry grower under contract with Simmons Foods, Inc. has caused groundwater contamination. *See* Fisher II Dep. at 511:5-17, 512:8-18 (Ex. 1); Fisher I Dep. at 237:13-238:10 (Ex. 62); Parrish Dep. at 197:16-198:15, 255:9-19 (Ex. 34).

2. Plaintiff admits it has no evidence that growers under contract with Simmons Foods, Inc. has caused runoff, discharge to or contamination of the waters of the state of Oklahoma. *See* Littlefield Dep. at 50:7-10, 187:23-188:1 (Ex. 37); Thompson Dep. at 21:22-22:25 (Ex. 60); Peach Dep. at 55:23-56:21 (Ex. 32); Berry Dep. at 255:9-19 (Ex. 73).